

FRAND in Practice

Findings from the FRAND Reports

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Introduction

- Growing importance of *standard essential patents* (SEPs) in the economy
- Benefits of *fair reasonable and non-discriminatory* (FRAND) licensing: balance incentives for innovation with incentives for wide standard adoption
- Principle is uncontroversial, implementation *can* be
- Purpose of guide: Neutral Overview of FRAND valuation methodologies

Nature of the report

- WIPO's Patents and Technology Law Division, WIPO's Department for Economics and Data Analytics
- Neutral and informative
- Overview of methodologies
- Balanced team of contributors:
 - Jorge Padilla and Pekka Sääskilahti with Andrew Tuffin and Timo Autio (Compass Lexecon)
 - Mario Lopez and Fei Deng with Jeremy Evans and Michiel Paris (Charles River Associates)
- Peer-review: Gaétan de Rassenfosse (EPFL)

FRAND Report: Outline

Introduction

Enabling Value

- Value through interoperability and scale

Mutually beneficial terms

- SDO policies: FRAND undertaking, essentiality declaration

Valuation from comparable contracts

- Focal Contract, Unpacking and Adjustment, Market based

Bottom-up approach

- Hypothetical negotiation, based on the value of the contribution

Top-down framework

- Total Aggregate Royalty Rate and portfolio allocation

Epilogue



Outlook

- While the legal and procedural rules differ on FRAND licensing, underlying economic question is the same.
- When should each approach be used, and how can they best be used together?
- Notwithstanding their limitations, valuation approaches make assumptions underlying disagreements explicit and help narrow their range
- In person workshop starting right after this panel